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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/780,382	02/17/2004	James A. Cole	GP-304129	1821

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LAURA C. HARGITT  
General Motors Corporation  
Legal Staff, Mail Code 482-C23-B21  
P.O. Box 300  
Detroit, MI 48265-3000

EXAMINER

KOEHLER, CHRISTOPHER M

ART UNIT	PAPER NUMBER
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3726

DATE MAILED: 11/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/780,382

Applicant(s)

COLE ET AL.

Examiner

Christopher M. Koehler

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 September 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 12-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of Group I, claims 1-11 in the reply filed on September 11, 2006 is acknowledged. The traversal is on the ground(s) that the groups while patentably distinct do not present a burdensome search. This is not found persuasive because the groups require different searches and therefore present a burden to the examiner.

The requirement is still deemed proper and is therefore made FINAL.

### ***Specification***

2. The disclosure is objected to because of the following informalities:
3. In paragraph 21 of the specification the applicant introduces a second tool referenced by "10□". Applicant is requested to correct all instances by replacement with --10'-- as shown in the accompanied drawings.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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5. Claims 1 and 3-10 are rejected under 35 U.S.C. 102(e) as being anticipated by Roy et al (US Patent No. 6,708,393).

Claim 1:

Roy teaches a tool for setting a gap between a panels including a first panel (30) movably attached at a first mounting location and a second panel (20) fixedly attached at a second mounting location, the panels being spaced apart to define a gap between the panels comprising a first body portion (104) adapted to be releasably attached to the first panel (30), a second body portion (102) adapted to be releasably attached to the second panel (20), a pin (140) having a predetermined diameter (col. 3, lines 43-46), the first and second body portions and the pin being attached to and movable relative one another (all attached to frame 100), whereby the first and second body portions are each attached to the respective first and second panels and the pin extends into the gap between the panels, the second body portion is moved relative to the first body portion until the first and second panels contact the pin thereby setting the gap at the predetermined diameter (figure 3 and col. 4, lines 14-65).

Claims 3 and 4:

Roy teaches an actuator (pneumatic pistons) for moving the first and second body portions relative to one another (col. 4, lines 26-31).

Claims 5 and 6:

Roy teaches a vacuum source for supplying a vacuum to a plurality of vacuum cups (110, 120, 180, 190, and 192) which releasably attach to body panels (col. 4, lines 44-47).

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Claims 7:

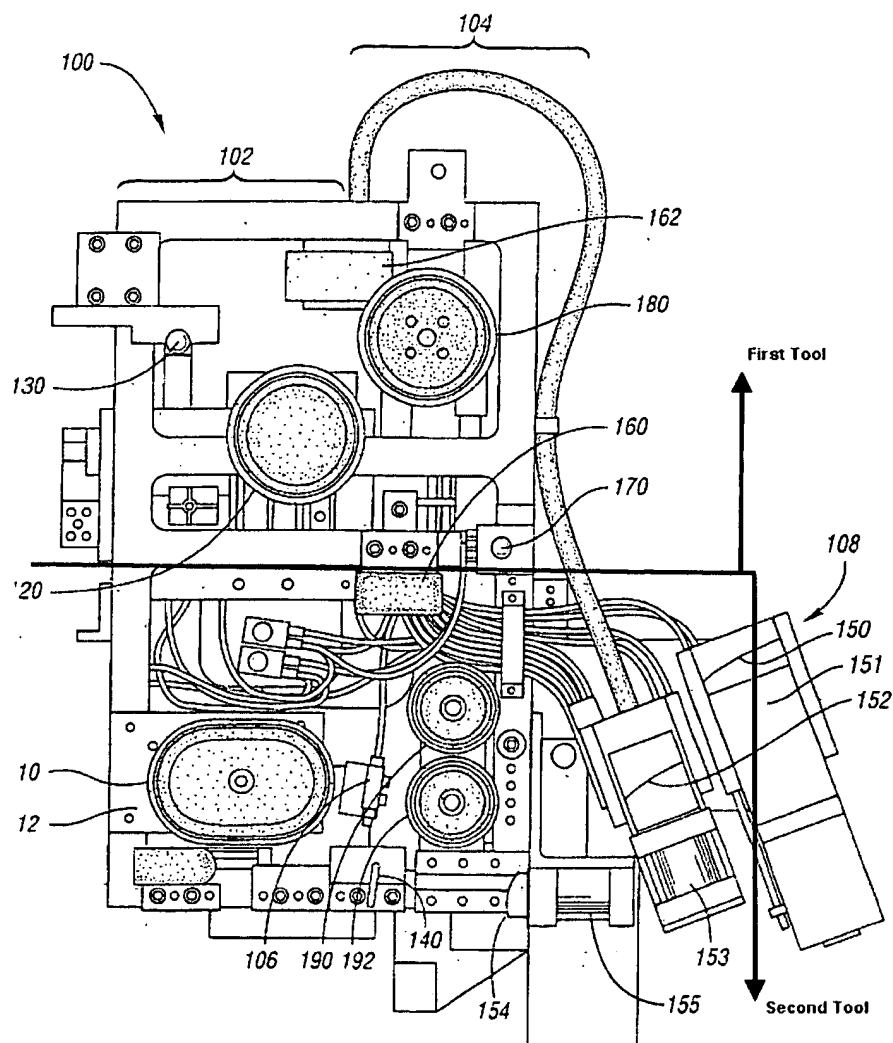
Roy teaches a control panel for controlling the movement of the body portions and the attachment on the body portions to the body panels (220 and col. 4, lines 1-25).

Claim 8:

Roy teaches a tool assembly for setting a gap between a pair of panels including a first panel movably attached at a first mounting location and a second panel fixedly attached at a second mounting location, the panels being spaced apart to define a gap between the panels comprising, a first tool (see below) having a first body portion (104) adapted to be releasably attached to the first panel (30), a second body portion (102) adapted to be releasably attached to the second panel (20), and a pin (140) having a predetermined diameter (col. 3, lines 43-46), the first and second body portions and the pin being attached to and movable relative one another (by frame 100), a second tool (see below) having a first body portion(104) adapted to be releasably attached to the first panel (30), a second body portion (102) adapted to be releasably attached to the second panel (20), and a pin (140) having a predetermined diameter (col. 3, lines 43-46), the first and second body portions and the pin being attached to and movable relative one another (by frame 100), a connector member (frame 100) extending between the first and second tools, a control panel (220) attached to the frame (100) for controlling the movement of the body portions and the attachment of the body portions to the panels, whereby the first and second body portions are each attached to the respective first and second panels and the pin extends into the gap between the panels, the second body portion is moved relative to the first body portion until the first and

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second panels contact the pin thereby setting the gap at the predetermined diameter  
(figure 3 and col. 4, lines 14-65).

*Fig. 1*Claim 9:

Roy teaches a vacuum source for supplying a vacuum to a plurality of vacuum cups (110, 120, 180, 190, and 192) which releasably attach to body panels (col. 4, lines 44-47).

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Claim 10:

Roy teaches that the tool has handles (200).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Roy in view of Baluta (US Patent No. 6,418,603). Roy teaches the structure claim 1 above but teaches that the pin is rigidly attached. Baluta teaches a pin (11) for inserting in the gap between a door and a fender (figure 2) to determine the required gap size whereby the pin is centered by a pair of springs (72 and 74). It would have been obvious to one of ordinary skill in the art at the time of invention to apply the springs of Baluta to the pin of Roy because the springs serve to resiliently maintain the position of the pin in a centered alignment.

8. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Roy in view of Busisi (US Patent No. 5,406,697). Roy teaches the structure of claim 8 above but does not explicitly teach an eyebolt extending from the frame to support the frame from above. Busisi teaches a gap setting tool that is mounted such that it is supported from above by a line (4) attached to the top of the frame, although he does not explicitly teach that the line is attached to an eyebolt the examiner takes official notice that the use of eye bolts for supporting structures from above is well known in the art and would

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have been obvious to one of ordinary skill in the art at the time of invention to use an eyebolt due to their strength in support and the free range of motion that it supplies due to the circular shape. It would have been obvious to one of ordinary skill in the art at the time of invention to apply the overhead support teachings of Busisi to the gapping tool of Roy in order to support the tool from above to reduce the weight that is negotiated by the worker and therefore increase the ergonomics of the tool assembly.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher M. Koehler whose telephone number is (571) 272-3560. The examiner can normally be reached on Mon.-Fri. 7:30A-4:00P.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Bryant can be reached on (571) 272-4526. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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CMK

A handwritten signature in black ink, appearing to read "David P. Bryant". The signature is fluid and cursive, with a large initial "D" and "B".

DAVID P. BRYANT  
SUPERVISORY PATENT EXAMINER

10/30/06